

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JANELLE MCDONALD,

Charging Party,

-v-

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Respondent.

Case # 0051011370

**ORDER AFFIRMING
AGENCY DECISION**

Janelle McDonald (McDonald) filed a complaint of discrimination based on disability against the Department of Environmental Quality (DEQ) with the Department of Labor and Industry. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined DEQ discriminated against McDonald. DEQ filed an appeal with the Montana Human Rights Commission (Commission) and requested oral argument. The Commission considered the matter on December 14, 2006. Only four of five Commission members were present for the hearing due to a resignation of one member. James Madden appeared and argued on behalf of DEQ. Phillip Hohenlohe appeared and argued on behalf of McDonald.

In its appeal, DEQ asserted the hearing officer erred both in law and in the findings of fact. DEQ argued that the hearing officer should have found DEQ had no legal duty to accommodate the specific needs of McDonald's service dog in an ordinary office environment. DEQ also asserted the hearing officer improperly found its attempts

to accommodate the animal were insufficient and improperly found McDonald was damaged by its actions. Finally, DEQ argued the damages award was incorrect. McDonald argued the hearing officer's determination was based on substantial evidence and contained no errors of law. McDonald also asserted the damages award was proper in that it was also based on substantial evidence and correct as a matter of law.

After considering the written and oral arguments of the parties and the record in the case, the Commission vote split two to two on the question of whether DEQ owed McDonald a duty to accommodate the needs of the service animal beyond allowing it in the building. Pursuant to § 2-15-124(8), MCA, although a majority of the membership of the Commission constitutes a quorum to do business, a favorable vote of at least a majority of the members is required to adopt a decision. In this matter, the Commission was unable to reach a majority vote. Therefore, the Commission concludes the prior-level decision of the Bureau stands and is **affirmed**. The Bureau's decision is attached and made part of this order by reference.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of December 2006.

Chair Ryan Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on this _____ day of _____, ____.

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Montana Human Rights Bureau